



1 UNITED STATES DISTRICT COURT  
2 District of Massachusetts

3 No. 04-30172-MAP

5 ROBERT DADE  
6 Plaintiff  
7 vs.

8 BOLAND BUILDERS, INC., THOMAS M.  
9 BOLAND, STUART JONES and  
10 MARY ROSE JONES  
11 Defendants

12 DEPOSITION OF: ROBERT E. DADE, taken

13 before ROXANNE C. COSTIGAN, Notary Public  
14 Stenographer, pursuant to Rule 30 of the  
15 Massachusetts Rules of Civil Procedure, at the  
16 offices of ROBINSON DONOVAN, P.C., 1500 Main Street,  
17 Suite 1600, Springfield, Massachusetts on March 20,  
18 2006.

19  
20 APPEARANCES: (See Page 2)

21  
22  
23  
24 Roxanne C. Costigan  
Registered Merit Reporter

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3 APPEARANCES:

4  
5 FOR THE DEFENDANT:

6 JOHN W. WHITE LAW OFFICE  
7 1500 Main Street  
8 Springfield, MA  
9 BY: DANIEL R. RIDER, ESQ.

10 FOR THE PLAINTIFF:

11 O'CONNELL, FLAHERTY & ATTMORE  
12 1350 Main Street  
13 Springfield, MA  
14 BY: JOHN A. CVEJANOVICH, ESQ.

15 FOR THE DEFENDANT:

16 ROBINSON DONOVAN, P.C.  
17 1500 Main Street  
18 Springfield, MA 01115  
19 BY: NANCY FRANKEL PELLETIER, ESQ.

2  
3 STIPULATIONS

4 It is agreed by and between the parties  
5 that all objections, except objections as to the form  
6 of the questions, and all motions to strike  
7 unresponsive answers are reserved and may be raised  
8 at the time of trial for the first time.

9 It is further agreed by and between the  
10 parties that the sealing of the original deposition  
11 transcript and notification to all parties of the  
12 receipt of the original deposition transcript is  
13 hereby waived.

14 (Exhibits 1-4, marked)

15 ROBERT E. DADE, Deponent, having been  
16 satisfactorily identified by the production of his  
17 driver's license and having been first duly sworn by  
18 the Notary Public, deposes and says as follows:

19  
20 DIRECT EXAMINATION BY MS. PELLETIER:

21 Q. Can you state your full name and present  
22 residential address, please?

23 A. Robert Ernest Dade, 51 Laurel Drive,  
24 Thomaston, Connecticut.

1 Q. Have you ever had your deposition taken  
2 before?

3 A. **No.**

Q. One of the very important rules in a  
✓ deposition is for you to wait until I finish a  
6 question before you begin speaking because the  
7 stenographer can't take down two people speaking at  
8 the same time. Do you understand that?

9 A. **Yes, I do.**

10 Q. Do you have a son whose name is also  
11 Robert Dade?

12 A. **Yeah, Robert Joseph Dade.**

13 Q. Who is Robert M. Dade?

14 A. **Nobody I know. It's not M. It's J. His  
15 middle initial is J. I don't know where M --**

16 Q. Can you tell me what you did in order to  
17 prepare for this deposition today?

18 A. **Well, I got these records from my  
19 partner. This is the printouts from my accountant  
20 who is Riccarddelli. The reason we have that is  
21 these checks are the only existing proof I have of  
22 wages because the computer crashed. So, I don't have  
23 any records of this time period other than these  
24 checks.**

6

1 Q. Did you have any conversations with  
2 anyone?

3 A. **Conversations?**

4 Q. Did you talk to anyone?

5 A. **Just the attorney.**

6 Q. Okay.

7 A. **About what? What do you mean?**

8 Q. What did you say and what did he say?

9 A. **Oh, he just asked me to get these  
10 records, that's all, and come here for a deposition,  
11 that's all.**

12 Q. Did you talk to your -- who is your  
13 partner?

14 A. **Janet Couch.**

15 Q. Spell the last name.

16 A. **C O U C H.**

17 Q. Did you talk to her?

18 A. **Oh, yeah. Well, that's how I got these  
19 records. Yeah.**

-- Q. What else did you talk to her about?

A. **Just that I needed these records that the  
22 attorney requested.**

23 Q. Did you talk to your son?

24 A. **What?**

1 Q. Did you talk to your son?

2 A. **No.**

3 Q. You didn't talk to him at all?

4 A. **Well, I called him. I thought he was  
5 coming here today. I mean, he said no, he wasn't  
6 coming here today. I made that call this morning  
7 but -- because I was trying to figure out how to get  
8 here.**

9 Q. Where are you presently employed, sir?

10 A. **Seamless Metal Roofing, LLC. It's a --**

11 Q. Seamless Metal Roofing?

12 A. **What happened is --**

13 Q. Hang on a minute. Seamless Metal  
14 Roofing, LLC?

15 A. **Yes. 20 Walnut Hill Road, Thomaston,  
16 Connecticut.**

17 Q. When was Seamless Metal Roofing, LLC  
18 created?

19 A. **2001.**

20 Q. What month?

21 A. **I'm not sure. I'd have to find out.**

22 Q. Do you know when your son's accident was?

23 A. **I believe it was September, 2001.**

24 Q. As of the date of your son's accident,

8

1 did Seamless Metal Roofing, LLC exist?

2 A. **I don't think so. I'm not sure of the  
3 date. I thought it did. See, I was under the  
4 impression that this was -- not that I did, but it  
5 was shortly after that. My partner told me that, no,  
6 this was the company at the time and we changed it.  
7 Shortly after that, we incorporated, I guess, you  
8 know. See, this is the old company under her husband  
9 and her, right, and Seamless Metals, and we  
10 incorporated. We were partners. I'd have to get  
11 that information from my accountant. I really  
12 couldn't tell you.**

13 Q. When did you first have any kind of a  
14 relationship with anybody with the name Seamless  
15 Metals?

16 A. **Well, back when Doug was running the  
17 business, probably fifteen, maybe eighteen years ago.  
18 I don't know.**

19 Q. Doug would be Janet's husband?

20 A. **Right. He's now deceased, though.**

21 Q. Okay. When you first had any kind of a  
22 relationship with Seamless Metals, what form did the  
23 entity take, was it a corporation, was it a  
24 partnership, what was it?

1 A. I don't really know. I just work for  
2 them, you know.

3 Q. What was your job?

4 A. I ran a crew, you know. I subcontracted  
5 work from them really.

6 Q. You ran a crew for them?

7 A. Yeah. Yeah, as a subcontractor.

8 Q. So, you were not an employee of theirs?

9 A. I was a subcontractor.

10 Q. You were not an employee? Do you know  
11 what an employee is as opposed to --

12 A. Yes, I know. That's why I'm telling you  
13 I was a subcontractor.

14 Q. So, you were a subcontractor, that was  
15 the relationship that you had with Seamless Metals?

16 A. Seamless Metals, right.

17 Q. What were you subcontracted to do?

18 A. Siding and roofing, mostly siding.

19 Q. Were you ever actually employed by  
20 Seamless Metal Roofing in whatever form it took --

21 A. No.

22 Q. You need to wait until I finish the  
23 question, sir.

24 A. Sorry.

10

1 Q. Were you ever employed by Seamless Metal  
2 Roofing in whatever form it took fifteen or eighteen  
3 years ago when Janet and Doug were running it?

4 A. Well, it's confusing because Seamless  
5 Metals at the time and, no, I just subcontracted from  
6 them. That's all.

7 Q. To your knowledge, was your son ever an  
8 employee of Seamless Metals?

9 A. Yes.

10 Q. When?

11 A. Well, it's been quite a while. I don't  
12 know exact dates, but he's worked there for -- he  
13 worked there for a long period of time before he --  
14 but I mean, he's not an employee. He was a  
15 subcontractor, same basis, you know.

16 Q. Well, no, it's not, sir. So, I'm going  
17 to ask you to listen to my questions carefully.

18 A. Okay.

19 Q. There's a distinction between an employee  
and a subcontractor, do you understand that?

A. Yes.

22 Q. When you said earlier that you were a  
23 subcontractor and not an employee, do you receive a  
24 1099 or a W-2?

1 A. A 1099.

2 Q. You then testified that your son at some  
3 point was an employee of Seamless?

4 A. Well, no. Sorry.

5 Q. He was never an employee of Seamless?

6 A. Never an employee.

7 Q. Does Seamless have any employees?

8 A. What's that?

9 Q. Did Seamless have any employees?

10 A. No.

11 Q. They never had any employees?

12 A. No. They always used subcontractors to  
13 my knowledge. I mean --

14 Q. When did Mr. -- how do you pronounce the  
15 name, David -- how do you pronounce the last name?

16 A. Mine?

17 MR. CVEJANOVICH: Doug.

18 THE WITNESS: David? Oh, Doug

19 Couch.

20 Q. (By Ms. Pelletier) Couch, when did he  
21 pass away?

22 A. It's been about thirteen or fourteen  
23 years.

24 Q. Did your relationship with Seamless

12

1 change after Mr. Couch passed away?

2 A. Yeah. I left the company for a while.

3 Q. When was that, what years?

4 A. Oh, well, just prior to my being -- after  
5 he -- what the, when -- I'm trying to think what the  
6 dates would be. If we were partner, I'm saying, I'm  
7 going by this from my memory, if we were partners in  
8 '01, then it had to be like in '99, I left because I  
9 worked for Peter L. Brown for a little over a year.

10 Q. Then at some point you came to enter into  
11 some relationship with Janet?

12 A. Yes.

13 Q. How did that come about?

14 A. Well, Doug had died. The fellow she had  
15 running the company, John Doherty, died. And so, she  
16 asked me to come there and help her, you know, and  
17 they had a lot of problems with John Doherty running  
18 it and he, you know, did a lot of things that, you  
19 know, he took deposits. Well, I'm not going to go  
20 into it, but he did a lot of things that I was not  
21 happy with and didn't want anything to do with, and I  
22 said, well, if we're going to work together, then  
23 we're going to start a new company, you and I, and  
24 it's going to be separate from Seamless Metals. So,

1 we formed an LLC, and we call it Seamless Metal

2 Roofing Company, LLC.

3 Q. Did Mr. Doherty continue to operate some  
other business called Seamless Metals?

4 A. **No. He died.**

5 Q. So, what was the change, you called it  
6 Seamless Metal Roofing, LLC?

7 A. **I beg your pardon?**

8 Q. What was the change, you said you wanted  
9 to separate it?

10 A. **Yeah. I changed it to -- I still use the**  
11 **name Seamless because I worked with Doug for**  
12 **twenty-five years to build up the name and this guy**  
13 **worked for a couple years tearing it down, you know**  
14 **what I mean? So, I wanted to retain some of the**  
15 **residual business. So, I changed it to Seamless**  
16 **Metal Roofing, LLC because at that point we didn't do**  
17 **anything else. We didn't fabricate metals. See,**  
18 **when we were Seamless Metals, we did seamless metal**  
19 **siding as well as roofing. And at this point, we're**  
20 **just doing roofing, nothing else.**

21 Q. When you came back to start doing this  
22 work with Janet, did you sign any agreements with  
23 her?  
24

14

1 A. **Not really. I don't think so.**

2 Q. How was this LLC formed, did you go to  
3 see a lawyer?

4 A. **No. I had my accountant write it up.**

5 Q. Your accountant did it?

6 A. **Yeah.**

7 Q. What's your accountant's name?

8 A. **Karen Riccardelli.**

9 Q. Can you spell that?

10 A. **R I C C A R D D E L L I. Mouthful.**

11 Q. You have documents somewhere that show  
12 when Seamless Metal Roofing, LLC was formed?

13 A. **Well, I can get them from her if you**  
14 **want. I could have them fax it over to you if you**  
15 **want. I, if you like, I could call her up now.**

16 Q. Maybe we'll do that at a break.  
17 Who besides you and Janet have an ownership interest  
18 in Seamless Metal Roofing, LLC?

19 A. **Just us. That's all.**

20 Q. As of 2001, how many employees did  
21 Seamless Metal Roofing, LLC have?

22 A. **We don't have -- we subcontract. We**  
23 **don't -- we use subcontractors solely.**

24 Q. So, the answer is none?

1 A. **None. Right.**

2 Q. How do you determine whether to hire  
3 somebody as a subcontractor for Seamless Metal  
4 Roofing?

5 A. **How do we determine it?**

6 Q. Yes.

7 A. **If they're qualified, they work, if**  
8 **someone can do the work, be reliable, responsible.**

9 Q. How do you determine if they're qualified  
10 and can do the work?

11 A. **By having them come on the job and**  
12 **talking to them first thing and then having them come**  
13 **on the job and do some work, and if they can perform**  
14 **well, then they do it, you know.**

15 Q. Do your subcontractors have to carry any  
16 types of licenses in order to perform the work for  
17 Seamless Metal Roofing, LLC?

18 A. **No.**

19 Q. Does Seamless Metal Roofing hold any type  
20 of license?

21 A. **Yes.**

22 Q. What's the license that you hold?

23 A. **Well, state of Connecticut license. Want**  
24 **to see it?**

16

1 Q. State of Connecticut license to do what?

2 A. **Put up metal roofing. I assume. Maybe**  
3 **it says something else. It's a contractor's license.**  
4 **Home improvement, that's what it says. Home**  
5 **improvement.**

6 Q. So, I'm going to take a copy of this at a  
7 break. You've handed me a document that says State  
8 of Connecticut, Department of Consumer Protection,  
9 Home Improvement Contractor, and it says Seamless  
10 Metal Roofing Co., not LLC?

11 A. **Well, I checked back with them because**  
12 **that's the card and they said it was listed as LLC.**  
13 **Why it didn't come out on the card, I don't know.**

14 Q. It's your understanding, sir, that  
15 Seamless Metal Roofing can utilize this license by  
16 hiring contractors who are not licensed to do its  
17 work?

18 A. **I don't know that there's any requirement**  
19 **for subcontractors to have a license. They do have**  
20 **to provide their own insurance and their own**  
21 **workman's comp. and their own liability, but other**  
22 **than --**

23 Q. Do you require that the subcontractors  
24 that you hire carry worker's compensation insurance?

1 A. I don't know. That afternoon sometime, I  
2 guess, you know.

3 Q. So, he actually got off the roof and went  
back on later in the day, correct?

4 A. I don't know.

5 Q. How long, about, were you at the site  
6 that day the day that your son fell?

7 A. I told you probably about twenty minutes.  
8 It might have been a little bit longer. Might have  
9 been a little bit less. I wasn't there very long, I  
10 know that. I went there, checked to make sure  
11 everything was all right, if they had any questions  
12 about anything, the way it was supposed to be done.  
13 That's it.

14 Q. Were you ever inside the building?

15 A. I went in and talked to -- what's his --  
16 the homeowner there for a few minutes, I believe  
17 that's that same day.

18 Q. Where in the building were you?

19 A. Well, around back. I didn't really go  
20 into it, you know. There was like a hallway or  
21 something, I talked to him there. I don't know if  
22 that was his kitchen or what it was but --

23 Q. Did you observe any skylight holes cut  
24

54

1 out?

2 A. No.

3 Q. And you believe you might have been in  
4 the kitchen?

5 A. I don't really know where it was. You  
6 know, it's hard to remember. You walk around the  
7 back of the house and there was like a little hallway  
8 or something there.

9 Q. I'm going to show you a document and ask  
10 you if you can identify that.

11 A. Yeah. These are statements from the  
12 bank, payments made for different jobs.

13 Q. Who created that document?

14 A. What's that?

15 Q. Who created the document?

16 A. I don't know.

17 Q. Did you?

18 A. I didn't, no. I assume it would be the  
19 bank, right? Doesn't say. I don't know. Possibly  
20 Janet, she puts all the stuff on the computer in,  
21 what do call it, a Quick Books. Maybe that's where  
22 it came from.

23 Q. Do you have any knowledge as to what  
24 these documents mean, the four pages that is Exhibit

1 1?

2 A. Yeah. It's -- well, it's a check, the  
3 date number, a date, the number of the check, who it  
4 was paid to and on what job it was charged to.

5 Q. That's the first two pages. What do the  
6 second two pages mean?

7 A. This looks like a bank statement. I  
8 don't really know.

9 Q. I'm going to show you a document that was  
10 previously marked as Exhibit 3 and tell me if you  
11 know what that means?

12 A. These are checks that were paid to Mike  
13 Moffit on certain jobs for subcontract wages.

14 Q. By Seamless?

15 A. Yeah. Yes, ma'am. I don't know what  
16 these amounts and balances are at the bottom but --

17 Q. The top of the document marked as Exhibit  
18 3 has a series of checks referenced and the bottom of  
19 the document says find report and it just lists a  
20 bunch of numbers, is that correct?

21 A. Yes.

22 Q. You don't know what the bottom means?

23 A. No, I don't.

24 Q. Who if anybody to your knowledge would

56

1 know what these documents mean?

2 A. Janet Couch. Or if my accountant printed  
3 them out, she would know. I don't know what the  
4 source of the documents are. They're probably from  
5 Karen Riccardelli because she does our accounting.  
6 So, she would have those figures.

7 Q. Do you have any documents in your  
8 possession, custody or control that reflect what jobs  
9 you hired Mike Moffit for during the time that your  
10 son claims to have been incapable of working?

11 A. I think that's what these are, isn't it?

12 Q. You're looking at some documents, sir.  
13 Are those the same documents I showed you or are they  
14 different documents?

15 A. Well, I don't know if they're different  
16 documents or not. This is what --

17 Q. Thank you.

18 A. These, and then I have these checks  
19 because the computer crashed. So, I don't have --  
20 so, Janet dug out these checks. They're supposed to  
21 be for the time period in question.

22 MS. PELLETIER: Can you mark that?  
23 (Exhibit 6, marked)

24 Q. (By Ms. Pelletier) The document that's

1 been marked as Exhibit 6 says 2:33 p.m., January 27,  
2 2004, in the upper left-hand corner, correct?

3 A. **Yes.**

Q. What is it that you think that's supposed  
to represent?

6 A. **What's that?**

7 Q. What is it that you think that document  
8 is supposed to represent?

9 A. **These are checks paid to subcontractors**  
10 **doing the same work that Robert would have been**  
11 **doing.**

12 Q. Where does it tell me that that's the  
13 work that Robert would have been doing?

14 A. **It doesn't.**

15 Q. So, what are you basing your statement  
16 that that's what that tells me on?

17 A. **Because Robert was the one who was**  
18 **subcontracting their work and these are the people**  
19 **that had to do it.**

20 Q. This is in 2004, this is dated January of  
21 2004, correct?

22 A. **Yeah. I was asked to bring that here for**  
23 **different years. So, that's why I did.**

24 Q. Who asked you to bring this?

58

1 A. **John did.**

2 Q. You're talking about your son's attorney?

3 A. **What about it?**

4 Q. You're talking about your son's attorney?

5 A. **Yes.**

6 Q. What did he ask you to bring that caused  
7 you to come up with this two pieces of paper?

8 A. **Just, he just asked us to bring**  
9 **documentation of whatever readout we had of**  
10 **subcontractors we paid in lieu of Robert after he**  
11 **left.**

12 Q. Who is Gary Dew?

13 A. **Subcontractor.**

14 Q. He's another subcontractor?

15 A. **Yes.**

16 Q. Who is John Turner?

17 A. **Let me see. Oh, that won't be relevant.**  
18 **You can cross that out. That wouldn't be relevant.**

19 Q. Who is he?

20 A. **He is a fellow I had do some gutter work.**

MS. PELLETIER: Mark this, please.

(Exhibit 7, marked)

22 Q. (By Ms. Pelletier) The second document  
23 that you brought has now been marked as Exhibit 7.  
24

1 It says find report September 1, 2001, through  
2 January 1, 2005, but the dates are all from 2003 and  
3 2004. Is that right?

4 A. **That's correct.**

5 Q. So, you didn't bring any printouts for  
6 documents that show what happened in October,  
7 November of 2001, is that right?

8 A. **I guess that's when these are. I think**  
9 **she had some problem with the computer.**

10 Q. She, Janet?

11 A. **Janet, yes. I guess these are -- I would**  
12 **assume that's what these are.**

13 Q. For what period of time -- strike that.

14 Was there any period of time that

15 Seamless Metal Roofing had to engage a different  
16 subcontractor because your son couldn't work?

17 A. **Well, after he got hurt, that's why we**  
18 **used Mr. Moffit, and then when Mr. Moffit went, I**  
19 **used Mr. Dew.**

20 Q. What period of time was it that you claim  
21 you had to use Mr. Moffit because your son couldn't  
22 work?

23 A. **Right after he got hurt.**

24 Q. Until when?

60

1 A. **I don't know the dates. Until last year**  
2 **sometime, I think.**

3 Q. Can you explain to me then, sir, why  
4 Exhibit 1 shows you paid Robert Dade on the Gondolfo  
5 job on November 16, 2001?

6 A. **On this first page? I don't see it. Oh,**  
7 **yeah. Well, that's what it says. I don't know what**  
8 **that --**

9 Q. There's no check stub here for that date,  
10 would you agree with me?

11 A. **What's that?**

12 Q. There's no check stub there for the date  
13 that I just asked you about, is that correct?

14 A. **Isn't that that day, is that the date?**

15 Q. These are September, sir.

16 A. **We're looking for what -- what are we**  
17 **looking for?**

18 Q. November 16, 2001.

19 A. **Not that I can see.**

20 Q. There's no check stub reflecting a  
21 payment to Mr. Moffit either for November 16 of 2001,  
22 correct?

23 A. **There's no check stub in here for that**  
24 **period that I can see.**

1 Q. That's the period that you claim that  
2 Mr. Moffit had to be hired because your son couldn't  
3 work?

A. **Well, there's a lot of checks in here  
4 that went to Moffit in November, that's doesn't mean  
5 the November date you're saying. These are all made  
6 out to Mr. Moffit.**

8 Q. Is there one dated November 16 to

9 Mr. Moffit?

10 A. **No.**

11 Q. Is there one dated November 19 to

12 Mr. Moffit?

13 A. **No, not that I can see.**

14 Q. Is there one dated November 19 to your

15 son?

16 A. **No.**

17 Q. Is there one dated November 23 to your

18 son?

19 A. **Nope, not that I can see.**

20 Q. How about December 5, are there any

21 checks dated December 5 to your son?

22 A. **You say December?**

23 Q. December 5.

24 A. **Nope.**

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1 Q. How about December 19 to either your son  
2 or Mike Moffit?

3 A. **December 6, December 29. Unless these  
4 are not in order or something. No, there doesn't  
5 seem to be any -- some checks are missing here.**

6 Q. So, the checks that are missing --

7 A. **1637, skips to 1639. So, it's in that  
8 period of time.**

9 Q. According to this document that was

10 produced in this litigation allegedly showing

11 Mr. Moffit had to be hired to perform these jobs?

12 A. **Mm-hmm.**

13 Q. The checks that I just asked you about,  
14 they're not included in that check register, correct?

15 A. **No, not in this, no. It must be on that.**

16 Q. And also identified in the document that

17 was produced in this litigation that's been marked as

18 Exhibit 1 is a series of checks written to your son

19 during that same time frame that he claims that

Mr. Moffit had to be hired in order to perform work

and those checks are not in that register as well, is

22 that correct?

23 A. **Right.**

24 Q. Do you have any knowledge as to where

1 those check stubs are?

2 A. **No.**

3 Q. Who pulled those check stubs together for  
4 you to bring here today?

5 A. **Janet Couch.**

6 Q. How would your son or Mr. Moffit get

7 paid, how would you calculate how they would get paid

8 on any given job?

9 A. **By the amount they do.**

10 Q. How would anybody know what amount they

11 did, how does that work? Do they submit a piece of

12 paper that said, I did fifty, 150 square?

13 A. **Generally, generally, generally when they**

14 **were half done, they were paid, you know, most of**

15 **their money, and then when they finished, they were**

16 **paid the balance.**

17 Q. How would anybody know how much they did?

18 They're paid by the square, right?

19 A. **Because they say how much they did or I**

20 **would go there and see how much they did, you know.**

21 **Generally, when we're half done, we receive a payment**

22 **from the homeowner. That's usually the way it works,**

23 **one-third down, one-third when we're halfway through**

24 **the job, and then one-third when we're finished. So,**

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1 **when we're halfway, generally they would get half**  
2 **their money, and when we finish, they would get the**  
3 **rest. Sometimes they would want money, need money,**  
4 **we'd give it ahead of time. So, there's variables**  
5 **there, you know.**

6 Q. There was no paper trail of any of this?

7 A. **No, not other than checks.**

8 Q. Which we don't have?

9 A. **Apparently.**

10 MS. PELLETIER: Why don't we take a

11 break and see if you can call your accountant

12 or Janet and see if you can get those documents

13 faxed to us?

14 THE WITNESS: Okay.

15 (A recess was taken)

16 MS. PELLETIER: Back on the record.

17 Q. (By Ms. Pelletier) Several times when we

18 were on the record and off the record, you've made

19 comments about a computer crashing, is that correct?

20 A. **Yes.**

21 Q. What computer crashed?

22 A. **Well, Janet, what little bit I know about**

23 **computers, does her books on a Quick Books process**

24 **which then she then turns over to our accountant, and**

John.

(Off record conference)

MR. CVEJANOVICH: Back on the record.

CROSS EXAMINATION BY MR. CVEJANOVICH:

Q. I have before me what's been marked as Exhibit Number 5, and this is the proposal and contract for the house at 169 Worthington Street where your son got hurt?

A. Yes.

Q. Exhibits 3 and 4 are not ones you brought today, those were ones that Attorney Pelletier had here today, correct?

A. Right.

Q. Exhibit 1 was also -- 1 and 2 are also exhibits she had here today, not ones you brought with you?

A. Right.

Q. Numbers 6 and 7, just generally refer to what?

A. These are subcontract wages after Robert was hurt.

Q. Can you just kind of go through each

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column and say what they mean, begin with 6.

A. Okay. The check, the date it was issued, who it was issued to, what bank and the amount.

Q. Okay. So, where it says type, the word check indicates to you that a check was written?

A. Right.

Q. The date is the date the check was written?

A. That's correct.

Q. The name, for instance, Gary Dew, is the person who --

A. Right.

Q. -- received the check?

A. Subcontractor, right.

Q. Split, Thomaston Savings Bank is the bank the check was written on?

A. That's correct.

Q. And paid amount is the amount of the check?

A. Paid amount.

Q. Okay. Exhibit 7, if you could just go through, and first of all, what generally is referred to in those -- in that exhibit?

A. Well, under the date, there's -- has the

date it was issued and under the number, number of the check, under name it says the name of the subcontractor, under memo are the job names, under account it says Thomaston Savings, the bank we wrote the checks on, and under split it has subcontractors and the amount, that would be the amount of the check underneath that.

Q. Okay. So, again, but generally these checks were written to whom for what purpose?

A. These were written to -- these were all written to Mike Moffit for subcontract wages.

Q. Okay. How do they relate to the accident?

A. Well, we had to hire him as a subcontractor after Bobby got hurt and this would be loss of wages, in other words, wages that he would have had if he was working.

Q. Exhibit Number 8, what's contained in Exhibit Number 8?

A. As I understand it, these are check stubs that Janet Couch pulled out for the period requested that we, you know, the period she -- her computer crashed, and so, she has no computer record of these. So, she has these check stubs.

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Q. But the information would ordinarily have been -- what would ordinarily have been done with the check information?

A. These are subcontractors or the amount they were written for what job, this says R.J. Matthews final, you know.

Q. Ordinarily, this information in Exhibit Number 8 would have been put on some document similar to Exhibit 6 and 7?

A. Same as that, it would have been put in Quick Books so we'd have it on the computer.

Q. You have one more item here that has not been marked as exhibit. Can you mark that one?

(Exhibit 9, marked)

Q. (By Mr. Cvejnovich) What's been marked as Exhibit Number 9, what are these?

A. Number 9, these are checks that were written to Robert Joseph Dade but they were paid -- we actually paid them to Michael Moffit because this was the checks for the Boland job.

Q. By Boland job, you mean 169 Worthington?

A. That's correct.

Q. Huntington, excuse me?

A. That's correct.

1 Q. 169 Worthington Avenue in Huntington,  
2 Mass.

3 A. **Right, because he subcontracted the job.**  
4 **She wrote the checks out to him.**

5 Q. Okay.

6 MR. CVEJANOVICH: That's all I have.

7 THE WITNESS: Okay.

8

9 REDIRECT EXAMINATION BY MS. PELLETIER:

10 Q. Sir, you testified that the information  
11 contained in Exhibit 7 which reflects checks made  
12 payable to Mr. Moffit, Mr. Dew from January 9 of 2003  
13 through December 28 of 2004 allegedly reflects work  
14 that had to be done because your son couldn't do it?

15 A. **Right.**

16 Q. Where did you get that information?

17 A. **What do you mean where did I get that**  
18 **information?**

19 Q. Where did you get the information that  
20 that's what that document reflects?

21 A. **Because my son was subcontracting all the**  
22 **work from us and we had to hire these subcontractors.**

23 Q. Straight through January, 2005, it's your  
24 allegation that you had to hire those to replace your

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1 son?

2 A. **Well, how else would I do the work?**

3 Q. Well, sir, I don't know. Why don't you  
4 tell me?

5 MR. CVEJANOVICH: Just yes or no.

6 Q. (By Ms. Pelletier) Because in December  
7 of 2001, you were paying your son money, according to  
8 the documents that were produced in the course of  
9 this litigation?

10 A. **Mm-hmm. Yeah. January.**

11 Q. According to those documents that were  
12 produced in the course of this litigation, sir, your  
13 son started receiving checks back in November of 2001  
14 through the end of December of 2001. Did he ever  
15 have come back to work for Seamless?

16 A. **No.**

17 Q. He never came back to work for Seamless?

18 A. **No. Not really.**

19 Q. He never worked on the jobs that are  
reflected in the documents that were produced in the  
course of this litigation?

22 A. **In this period of time, this is January.**

23 Q. Do you recall ten minutes ago we went  
24 through these documents looking for checks from

1 November 19 of 2001, various dates in November and  
2 December?

3 A. **Yes.**

4 Q. Where these documents reflected the  
5 checks were written to your son?

6 A. **You lost me, lady. I'm just giving you**  
7 **these documents. They're computerized documents,**  
8 **what dates he was paid, and that's all I can tell**  
9 **you, you know.**

10 Q. You've just testified that those  
11 documents reflect something very specific. You've  
12 testified that those documents that you've produced  
13 today for the first time, Exhibits 7 and 6, reflect  
14 what you called lost wages to your son. Where did  
15 you get that information, that that's what those  
16 documents were designed to represent?

17 A. **I didn't say they were designed anything.**  
18 **These are -- this is when he was working. She just**  
19 **ran off what checks were paid to who during this**  
20 **period of time. Now, this says January.**

21 Q. She meaning Janet handed you those  
22 documents and those documents reflect all the checks  
23 that were written by Seamless to the various  
24 individuals identified, correct?

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1 A. **Right.**

2 Q. You don't have any personal knowledge,  
3 sir, as to whether those jobs would have gone to Mike  
4 Moffit, your son or anybody else, is that fair to  
5 state?

6 A. **How do you figure that?**

7 MR. CVEJANOVICH: Just answer the  
8 question, okay?

9 THE WITNESS: No. I -- if all --  
10 put it this way, Bob was subbing all our work  
11 until he was hurt, and after that, he couldn't  
12 sub it. So, we hired other subcontractors.

13 Q. (By Ms. Pelletier) You hired Mike Moffit  
14 at the same time as you hired your son, did you not?  
15 The documents right in front of us show you that,  
16 don't they?

17 A. **Mike Moffit was a subcontractor before.**

18 Q. That's right. And he was a  
19 subcontractor --

20 A. **What's your point?**

21 Q. And he was a subcontractor after, right?

22 A. **Well, this is the work Robert would have**  
23 **done. That's all I'm telling you.**

24 Q. How do you know that? How do you know

1 Mike Moffit wouldn't have done the work? Mike Moffit

2 did this job with your son, didn't he?

3 A. **Yeah.**

Q. Okay.

5 A. **I would have hired him to do it. Let me**  
 6 **put it that way. I don't know what to tell you.**  
 7 **When Bobby got hurt, he no longer subbed the jobs.**  
 8 **He was running -- any jobs we were doing, he was**  
 9 **running them.**

10 Q. For what period of time do you claim that  
 11 your son couldn't work?

12 A. **Well, after he got hurt, he couldn't**  
 13 **work.**

14 Q. To this day?

15 A. **Well, no. He's -- he can't do this work**  
 16 **anymore.**

17 Q. You can't explain to me --

18 A. **He since has gotten another job where he**  
 19 **could stay flat on the ground because his foot is**  
 20 **immobilized. He couldn't do roofing anymore.**

21 Q. You can't explain to me then, sir, why  
 22 the documents produced in the course of this  
 23 litigation reflect checks paid by Seamless Metal

24 Roofing to your son in the period of November and

86

1 December of 2001 on jobs that mirrored the ones that  
 2 you claim you had to hire Mike Moffit for?

3 A. **I don't know.**

4 Q. You don't know?

5 A. **No, I don't know.**

6 Q. You can't explain that?

7 A. **These are all written out to Mike Moffit.**  
 8 **Where are you talking about?**

9 Q. Do you see your son's name on this  
 10 document marked as Exhibit 1, Robert J. Dade, is that  
 11 your son or is that you?

12 A. **Yes, that's him.**

13 Q. Okay. Let's start with the top. What's  
 14 the date?

15 A. **It says 12/29/01.**

16 Q. What's the check number?

17 A. **1673.**

18 Q. What's the memo, what does it say for the  
 19 job?

A. **Wulford.**

20 Q. Say it again.

21 A. **Wulford.**

22 Q. Wulford. Look at Exhibit 4. What's the  
 23 date, top number, what's the date?

1 A. **12/29.**

2 Q. What's the check number?

3 A. **2001. 1671.**

4 Q. To whom was the check paid?

5 A. **Mike Moffit.**

6 Q. What was the job?

7 A. **Dubray.**

8 Q. Different job?

9 A. **Yup.**

10 Q. So, your son on December 29, 2001,  
 11 according to the documents produced in this  
 12 litigation, was paid by check number 1673 for working  
 13 on the Wulford job, right?

14 A. **That's what it says.**

15 Q. Okay. And Mr. Moffit was working on a  
 16 different job, was he not, according to these  
 17 documents, he was working on the Dubray job, is that  
 18 right?

19 A. **Mm-hmm.**

20 Q. That's yes, for the record, sir?

21 A. **Yes.**

22 Q. Let's go down one, shall we?

23 A. **Okay.**

24 Q. On Robert J. Dade which is Exhibit 1, is

88

1 that right?

2 A. **Yes.**

3 Q. What's the next check number, what's the  
 4 next date?

5 A. **16 -- 12/19.**

6 Q. '01?

7 A. **Yes.**

8 Q. Check number?

9 A. **1656.**

10 Q. Job, what's the job?

11 A. **Dubray.**

12 Q. How much -- strike that.

13 It doesn't tell you how much.

14 December -- what was the date of that, December 19?

15 A. **Yes.**

16 Q. Okay. Let's look at Mr. Moffit. He was  
 17 working somewhere else on December 19, was he not?

18 A. **Mm-hmm.**

19 Q. According to Exhibit 4, sir, where was he  
 20 working on December 19?

21 A. **Yeah. That's 12/29, same date.**

22 Q. December 19, we went down one, December  
 23 19, check number what?

24 A. **1655.**

1 Q. Different check number, correct?

2 A. **Right.**

3 Q. Different job, correct?

4 A. **Correct.**

5 Q. So, the documents that were produced in

6 the course of this litigation show that your son was

7 being paid to work a different job than Mr. Moffit

8 was working during November and December of 2001,

9 correct?

10 A. **Well, both say the same thing, Gilhewey,**

11 **Dubray, Dubray.**

12 Q. Not on the same dates, correct?

13 A. **Not on the same date, no.**

14 Q. They're different check numbers?

15 A. **Yes.**

16 Q. They were paid to two different people?

17 A. **Right.**

18 Q. Mr. Moffit and your son?

19 A. **Right.**

20 Q. But you're telling me your son never came

21 back to work and never worked for Seamless, right?

22 A. **As far as I know.**

23 Q. How do you explain this?

24 A. **Well, I don't have any idea. He stayed**

90

1 **around for a while, worked with him, I guess. He**

2 **didn't work really because he couldn't work.**

3 Q. But you paid him anyway?

4 A. **Apparently.**

5 **(Exhibit 8, marked)**

6 Q. (By Ms. Pelletier) By the way, none of

7 those check stubs are included in the document that's

8 been marked as Exhibit 8, right, those are the ones

9 you were looking for earlier?

10 A. **Not that I know of. Doesn't look like**

11 **it.**

12 Q. You testified that these check stubs that

13 show that your son was paid in connection with the

14 Boland job?

15 A. **Yes.**

16 Q. Mr. Moffit was really paid?

17 A. **Yes, that's what I was told.**

18 Q. By whom?

19 A. **By Janet Couch.**

20 Q. So, she wrote in the check registers that

21 she wrote a check to your son but she paid

22 Mr. Moffit?

23 A. **No.**

24 Q. Then explain that one to me.

1 A. **Paid this job off through my son, the**

2 **Boland job through my son because he started it. But**

3 **Mr. Moffit had to finish it anyway.**

4 Q. So, you did pay your son, Seamless Metal

5 Roofing paid your son for the Boland job, correct?

6 A. **Well, indirectly, yes.**

7 Q. What do you mean indirectly? I'm looking

8 at check stubs to Robert J. Dade?

9 A. **Yes.**

10 Q. You paid them directly?

11 A. **Well, he in turn paid -- well, you have**

12 **to discuss that with him, but he in turn paid**

13 **Mr. Moffit.**

14 Q. Okay. You don't have any personal

15 knowledge of what happened after this money was paid

16 by Seamless --

17 A. **No.**

18 Q. -- to Robert J. Dade?

19 A. **No. No.**

20 Q. When you go and price a job, do you ever

21 question the contractors to what if any experience

22 they have to installation of metal roofing?

23 A. **Contractors?**

24 Q. The general contractor on the site, do

92

1 you ever --

2 A. **No.**

3 Q. -- have any conversations with them about

4 the installation -- their knowledge of the

5 installation of metal roofing?

6 A. **Not really, no. Sometimes, I mean, they**

7 **ask, they want to put up a different system, and I**

8 **explain this system to them, that's all.**

9 Q. Do you have any knowledge as to whether

10 Mr. Boland had ever had any experience with

11 installation of metal roofing prior to this project?

12 A. **No.**

13 Q. Would it have mattered to you?

14 A. **No.**

15 Q. That's because you guys are the experts

16 at installation of the metal roof, not the general

17 contractor, correct?

18 A. **Well, we know how it goes on. They**

19 **don't. Yes, okay. Well, I mean, they have to have a**

20 **general knowledge of it.**

21 Q. Why?

22 A. **Why else would they want to have a roof?**

23 Q. Mr. Boland didn't want a metal roof, the

24 Joneses wanted a metal roof?